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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,080	03/24/2004	Baskaran C. Nair	24-0128	7090

7590 06/08/2005

Leonard & Proehl, Prof. L.L.C.
Attn: Jeffrey A. Proehl
3500 S. First Ave. Circle, Suite 250
Sioux Falls, SD 57105-5807

EXAMINER

SMITH, RICHARD A

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,080

Applicant(s)

NAIR, BASKARAN C.

Examiner

R. Alexander Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-13 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2,270,753 to Fikes in view of U.S. 1,660,341 to Lapworth.

Fikes discloses an artificial wind producing flag pole assembly for maintaining a flag in an unfurled position, the artificial wind producing flag pole assembly comprising two forms, one being as shown in figure 4 with a large generic base with a blower centered, and the other being as shown in figure 1 that has a small base for the flag and a separate blower at a distance. In figure 4, Fikes discloses intake holes in the perimeter wall for the blower assembly.

Using the embodiment in figure 1, Fikes discloses that when the blower assembly is separate from the base assembly that the base assembly is fully enclosed forming a plenum to redirect air coming in the perimeter wall via line 9 into the bore 2 and the bottom of the base being planar, and the base member being substantially hollow, said bottom face of said base member is located at a lowermost position on said flag pole assembly such that said flag pole

assembly rests on said bottom face, said blower assembly rests on a ground surface when said base member rests on the ground surface, said base member comprises a substantially circular bottom face a perimeter face with an upper face wherein said blower assembly is coupled to said perimeter face of said base member, said flagpole being coupled to said upper face of said base member such that said flagpole extends upwardly from said base member; and said blower assembly has an interior with an outlet, the outlet of said blower assembly connected to a portion of said perimeter face of said base member such that said blower assembly blows air into said base member through said perimeter face.

Using the embodiment in figure 4, Fikes discloses an artificial wind producing flag pole assembly for maintaining a flag in an unfurled position, the artificial wind producing flag pole assembly comprising a base member 11 being adapted for being positioned on a support surface; a blower assembly 8' being coupled to said base member such that said blower assembly is in fluid communication with said base member, a flagpole 1 being coupled to said base member such that said flagpole is in fluid communication with said base member, said flagpole comprising a plurality of exhaust apertures 15 extending into said flagpole such that each of said exhaust apertures allow air blown into said flagpole to be exhausted, said flagpole being adapted for receiving the flag such that the flag is positioned proximate the exhaust apertures to allow the air exhausted through said exhaust apertures to flow over the flag and maintain the flag in the unfurled position; the flag being mounted to the pole via a plurality of collars 5, an upper eyehook for holding the flag, said eyehook being aligned with said exhaust apertures for controlling the flag and keeping it aligned with said apertures, said exhaust apertures are adapted for being aligned with the base edge of the flag such that said exhaust apertures exhaust the air

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over the base edge and along the sides of the flag to unfurl the flag, said flagpole comprising a perimeter wall, said perimeter wall defining a venting bore 2 extending along a portion of a length of said flagpole, each of said exhaust apertures 15 extending through said perimeter wall such that each of said exhaust apertures is in fluid communication with said venting bore, said venting bore comprising an open end in fluid communication with said base member such that air supplied by said blower assembly enters said venting bore through said open end and is exhausted from said venting bore through said exhaust apertures, said base member comprising an upper face, a bottom face and a perimeter face, said flagpole being coupled to said upper face of said base member such that said flagpole extends upwardly from said base member, said bottom face being adapted for being positioned on the support surface, said bottom face of said base member being substantially planar such that said bottom face resists tipping of said base member and said flagpole when said base member is positioned on the support surface and the flag is unfurled from said flag, said bottom face of said base member is located at a lowermost position on said flag pole assembly such that said flag pole assembly rests on said bottom face, wherein said base member comprises a substantially circular upper face, a substantially circular bottom face and a substantially cylindrical perimeter face, said upper face being planar (around the area where the flagpole connects) and said bottom face being substantially planar, said perimeter face extending between said upper face and said bottom face, said flagpole being coupled to said upper face of said base member such that said flagpole extends upwardly from said base member.

Fikes does not disclose in said embodiment, said blower assembly being adapted for blowing air into said base member; said flagpole being positioned opposite said blower assembly such that said blower assembly is adapted for blowing air through said base member into said flagpole, a plurality of clip members being coupled to said flagpole, each of said clip members being adapted for being selectively coupled to the flag such that said clip members are for coupling the flag to said flagpole, said clip members being positioned in a space relationship proximate a top end of said flag pole, said clip members are adapted for being selectively coupled to a base edge of the flag such that said clip members maintain the base edge of the flag in a substantially vertical position and substantially aligned with a longitudinal axis of said flagpole when said clip members are coupled to the base edge of the flag, said exhaust apertures of said flagpole being aligned with said clip members such that said exhaust apertures are positioned between said clip members, said exhaust apertures are adapted for being aligned with the base edge of the flag such that said exhaust apertures exhaust the air over the base edge and along the sides of the flag to unfurl the flag when the flag is coupled to said clip members, said clip members being positioned opposite said blower assembly, said clip members being adapted for permitting the flag to extend outwardly from said flagpole in a direction opposite said blower assembly such that a weight of said blower assembly facilitates stability of said flagpole by balancing a force applied to said flagpole by the flag when the flag is unfurled, said base member having a transfer bore wherein said transfer bore extends through the base member such that said transfer bore is in fluid communication with said blower assembly and said open end of said venting bore, said blower assembly being coupled to said perimeter face of said base member, 1p__1p__1p the plurality of exhaust apertures being positioned on an opposite side of said

flagpole from a mounting location of the blower assembly, 10p__10p__10p and the base member being substantially cylindrical in shape (when using the embodiment of figure 1), the upper face and the bottom face and the perimeter face each being substantially circular (when using the embodiment of figure 1), 12p__12p__12p said blower assembly is positioned laterally outward from said base member and is rigidly connected to the base member in a manner such that said blower assembly rests on a ground surface when said base member rests on the ground surface.

Lapworth discloses a flag pole assembly wherein a plenum in element 14 is offset from the blower assembly in order to redirect the air from the blower to the flag pole, that the blower motor can be sat upon the same base as the flagpole and offset from the flagpole opposite the flag and its supporting eyehooks and clip members, and wherein a plurality of exhaust apertures are positioned on an opposite side of said flagpole from the blower assembly. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base member, taught by Fikes, to place the blower separate to and attached to a perimeter face and side thereof, as suggested by Lapworth and also by Fikes via the embodiment of figure 1, and opposite the flag, the eyehooks, the clip members and the exhaust apertures, as taught by Lapworth, in order to produce a smaller and lighter overall assembly that will allow the flag to blow in the intended direction while offsetting the imbalance created by a blowing flag.

Lapworth discloses a flag pole assembly wherein the pole comprises eyehooks and the flag includes clip members such that said eyehooks with said clip members are positioned in a space relationship proximate a top end of said flag pole, said eyehooks with said clip members are adapted for being selectively coupled to a base edge of the flag such that said eyehooks with

said clip members maintain the base edge of the flag in a substantially vertical position and substantially aligned with a longitudinal axis of said flagpole when said eyehooks with said clip members are coupled to the base edge of the flag, said exhaust apertures of said flagpole being aligned with said eyehooks with said clip members such that said exhaust apertures are positioned between said eyehooks with said clip members, said exhaust apertures are adapted for being aligned with the base edge of the flag such that said exhaust apertures exhaust the air over the base edge and along the sides of the flag to unfurl the flag when the flag is coupled to said clip members. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly and collars, taught by Fikes, to use eyehooks and clip members and to position them between and to align them with the exhaust apertures, as suggested by Lapworth, in order to allow easier removal and attachment of a flag and to reduce the number of holes needed to be placed in the hole and to reduce energy costs by removing the venting of blown air which does not affect the flag.

With respect to the clip members being attached to the flag pole assembly as claimed: It would have been obvious to one having ordinary skill in the art at the time of the invention was made to place the clip members to the flag pole, since it has been held that rearranging parts of an invention involves only routine skill in the art, *In re Japikse* 86 USPQ 70, and since this would allow the attachment of flags having grommets for mounting them as is commonly available for modern flags at the time of the invention.

With respect to said base member having a transfer bore wherein said transfer bore extends through the base member such that said transfer bore is in fluid communication with said blower assembly and said open end of said venting bore in claim 7 and claim 10: In figure 1,

Fikes discloses that when the blower is separate the perimeter face of the base member is enclosed and a plenum, i.e., chamber 7, is enclosed so to direct air blown from the blower assembly from the opening in the perimeter face into the open end of the venting bore.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the embodiment as shown in figure 4, taught by Fikes as modified by Lapworth, to be completely enclosed, as taught by Fikes, in order to force the blower air up the venting bore of the flagpole when the blower assembly is not directly within the base member. The use of the transfer bore, as claimed by Applicant, is considered to be equivalent to the plenum, as disclosed by Fikes, since: 1) neither non obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained if one is used instead of the other, as long as the blown air is redirect up the flagpole, as already taught by Fikes, and 2) the use of the transfer bore, absent any criticality, is considered to be nothing more than the use of one of numerous and well known alternate types of plenums that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to redirect the air from the blower to the flag pole bore, as already taught by Fikes. In this case to provide a smaller base member which has the same weight and support stability as the embodiment with a plenum in the shape of a chamber.

With respect to 10p__10p__10p the base member being substantially cylindrical in shape (when using the embodiment of figure 1), the upper face and the bottom face and the perimeter face each being substantially circular (when using the embodiment of figure 1): Fikes discloses in figure 1, a circular base member with a bottom face being circular and planar, and an upper and perimeter face that is substantially semi-spherical; and discloses in figure 4 a

substantially circular bottom face that is planar, a perimeter face that is substantially circular, and an upper face that is substantially circular with a planar portion wherein the perimeter face extends between the upper and bottom faces: Therefore the base member comprising a substantially circular upper face, a substantially circular bottom face and a substantially cylindrical perimeter face, said upper face being substantially planar and said bottom face being substantially planar as claimed, are only considered to be obvious modifications of the shape of the base member because the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide. In re Dailey, 149 USPQ 47 (CCPA 1976).

With respect to said blower assembly is positioned laterally outward from said base member and is rigidly connected to the base member in a manner such that said blower assembly rests on a ground surface when said base member rests on the ground surface. As stated above Fikes in figure 1 already shows the base member and blower assembly each resting on the ground and each having a perimeter face being connected through a hose (9), the rigid connection of two would inherently meet this limitation.

Response to Arguments

3. Applicant's arguments filed March 15, 2005 have been fully considered but they are not persuasive.

With respect to the argument that spans pages 9-10 and the argument with respect to the added claims 11-13: This argument is not persuasive since the applied rejection did not have the blower assembly supporting the flag as shown by Lapworth. The applied rejection was Fikes in view of Lapworth wherein Fikes discloses in the embodiment of figure 1 that the blower assembly and flag support can be separate and wherein Lapworth discloses that the a blower assembly can be attached to a flagpole in a manner such that the blower is opposite to the flag. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to join the perimeter sides of the blower assembly and base member, taught by Fikes, to be rigidly inter-connected such that the blower assembly is opposite the apertures and the flag, as taught Lapworth, in order to produce a smaller and lighter overall assembly that will allow the flag to blow in the intended direction while offsetting the imbalance created by a blowing flag. This arrangement does not appear to the examiner as resulting in a weight increase or extra bulk as argued by Applicant.

With respect to the argument that spans pages 10-11: The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Further, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure

of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, the knowledge and motivation would be available to one of ordinary skill in the art, since it would be obvious to one of ordinary skill in the art at the time of the invention that flags mounted on vertically oriented flagpoles that are portable must be stabilized to account for movement of the flag so that the flag will not cause the flagpole to fall over throughout the range and wind conditions expected. In this case, since the portable flag assemblies for both Fikes and Lapworth include a blower assembly to create the wind then it would have been obvious to modify the embodiment of figure 1 of Lapworth, to be rigidly interconnected, as suggested by Fikes, and to offset the blower assembly opposite the flag, as taught by Fikes, in order to produce a smaller and lighter overall assembly that will allow the flag to blow in the intended direction while offsetting the imbalance created by a blowing flag.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

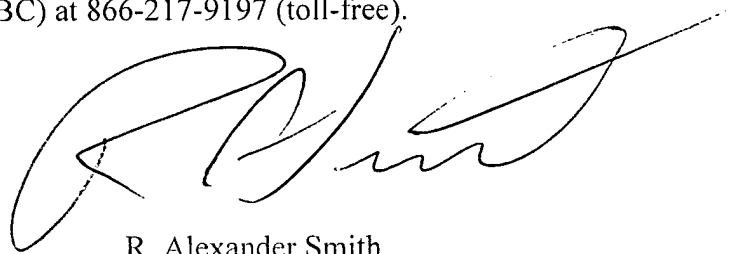
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Alexander Smith', is written over a horizontal line.

R. Alexander Smith
Primary Examiner
Technology Center 2800

RAS
June 3, 2005